

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 GEORGE TIAFFAY,

Case No. 2:20-cv-02257-JAD-EJY

5 Petitioner,

6 v.

**Order Granting Petitioner's Motion for
Leave to File First Amended Petition and
Motion for a Scheduling Order**

7 CALVIN JOHNSON, et al.,

8 Respondents.

[ECF Nos. 14, 15]

9 Following the notice of appearance by the Federal Public Defender on June 15, 2021,¹
10 Petitioner George Tiaffay moves for leave to file his first amended petition for writ of habeas
11 corpus² and for a scheduling order.³ Tiaffay tentatively calculated the federal statute of
12 limitations under 28 U.S.C. § 2244(d), and because the limitations period may expire on or about
13 June 16, 2021,⁴ he requests leave to file his first amended petition as a protective petition.⁵
14 Tiaffay further requests issuance of a scheduling order that provides for the opportunity to file a
15 second amended petition that reflects his counsel's thorough review, research, and investigation.⁶
16 The respondents do not oppose the petitioner's motions.⁷

17 The motions essentially seek to pursue a two-step procedure whereby Tiaffay: (a) files an
18 initial counseled amended petition preserving all then-known claims potentially free of possible
19 relation-back or timing issues; and (b) thereafter potentially files a second amended petition after
20 federal habeas counsel has had a full opportunity to independently investigate all potential
21 claims.⁸ I find that Tiaffay has shown good cause to utilize the two-step procedure here and,

22 ¹ ECF No. 13. *See also* ECF No. 16.

23 ² ECF No. 14.

24 ³ ECF No. 15.

25 ⁴ I express no opinion as to the putative expiration date of the limitation period in this case.

26 ⁵ ECF No. 14 at 2.

27 ⁶ ECF No. 15 at 3.

28 ⁷ ECF Nos. 17, 18.

⁸ *See, e.g., McMahon v. Neven*, No. 2:14-cv-00076-APG-CWH, ECF No. 29 (D. Nev., May 29, 2014) (explaining the court's rationale in allowing a bifurcated amendment procedure in habeas cases where the

1 therefore, grant his motions.

2 IT IS HEREBY ORDERED:

- 3 1. The Federal Public Defender, through Jeremy C. Baron, Esq., is appointed as
4 counsel for Petitioner under 18 U.S.C. § 3006A(a)(2)(B). Mr. Baron will
5 represent Petitioner in all federal proceedings related to this matter, including any
6 appeals or certiorari proceedings, unless allowed to withdraw.
- 7 2. Petitioner George Tiaffay's Motion for Leave to File First Amended Petition
8 (ECF No. 14) and Motion for Scheduling Order (ECF No. 15) are **GRANTED**.
- 9 3. The Clerk of Court is directed to **FILE** the first amended petition (ECF Nos. 14-1
10 to 14-18) with the filing date of June 16, 2021.
- 11 4. Respondents are not required to respond to the first amended petition at this time.
- 12 5. Petitioner will have until October 7, 2021, to file a second amended petition or
13 seek other appropriate relief. This deadline and any extensions of it may not
14 be construed as implied findings regarding the federal limitation period or a basis
15 for tolling. Petitioner at all times remains responsible for calculating the
16 limitation period and timely asserting claims, without regard to any court-ordered
17 deadlines or extensions. So, a petition or amended petition filed within a court-
18 ordered deadline may still be dismissed as untimely if it violates the statute of
19 limitations.
- 20 6. If Petitioner files a second amended petition, Respondents will have 60 days from
21 the date of service to respond to it—including by motion to dismiss. If Petitioner
22 chooses *not* to file a second amended petition, Respondents must, within 60 days
23 of the expiration of the time to do so, file a response to the first amended petition.
24 Petitioner will have 30 days from the date of service of an answer to file
25 a reply. However, Local Rule LR 7-2(b) governs the scheduling for responses
26 and replies to motions filed by either party, including motions filed in lieu of

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limitation period potentially may expire before federal habeas counsel would be able to conduct a
complete investigation); *Xiao Ye Bai v. Nevada*, 2021 WL 246110, at *1 (D. Nev. Jan. 25, 2021).

1 pleadings.

- 2 7. Any procedural defenses raised by Respondents to the counseled amended
3 petition must be raised together in a single, consolidated motion to
4 dismiss. Successive motions to dismiss will not be entertained, and any
5 procedural defenses omitted from the consolidated motion to dismiss will be
6 waived. Respondents may not file a response that consolidates their procedural
7 defenses, if any, with their response on the merits. But arguments that an
8 unexhausted claim clearly lacks merit may be included a procedural-defense
9 response. If Respondents do seek dismissal of unexhausted claims
10 under 28 U.S.C. § 2254(b)(2) they must: (1) do so in a single motion to dismiss,
11 not in the answer; and (2) specifically direct their argument to the standard for
12 dismissal under § 2254(b)(2). Basically, no procedural defenses, including
13 exhaustion, may be included with the merits in an answer. All procedural
14 defenses, including exhaustion, must be raised in a single dismissal motion.
- 15 8. In any answer filed on the merits, Respondents must specifically cite to and
16 address the applicable state-court-written decision and state-court-
17 record materials, if any, regarding each claim within the response as to that
18 claim.
- 19 9. All state court records and exhibits must be filed in accordance with LR IA 10-3
20 and LR IC 2-2 and include a separate index identifying each exhibit by number or
21 letter. The index must be filed in CM/ECF's document upload screen as the base
22 document to receive the base docket number (*e.g.*, ECF No. 10). Each exhibit
23 must then be filed as "attachments" to the base document to receive a sequenced
24 sub-docket number (*e.g.*, Exhibit A (ECF No. 10-1), Exhibit B (ECF No. 10-2),
25 Exhibit C (ECF No. 10-3), and so forth). If the exhibits will span more than one
26 filing, the base document in each successive filing must be either a copy of the
27 index or volume cover page.
- 28 10. Notwithstanding LR IC 2-2(g), paper copies of any electronically filed exhibits

1 need not be provided to chambers or to the staff attorney, unless later directed by
2 the court.

3 Dated: 7-12-21

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6 U.S. District Judge Jennifer A. Dorsey
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